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Civil and Political Rights

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HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1302nd MEETING

Held at Headquarters, New York,
on Monday, 28 March 1994, at 10 a.m.

Chairman: Mr. ANDO

later: Mr. WENNERGREN
(Vice-Chairman)

later: Mr. ANDO

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Mexico

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Mexico (CCPR/C/76/Add.2)

1. At the invitation of the Chairman, Mr. González Felix (Mexico), took a place at the Committee table.

2. Mr. GONZÁLEZ FELIX (Mexico) said that his Government attached particular importance to its reporting obligations under the Covenant, and in submitting the third periodic report (CCPR/C/76/Add.2), which had been prepared in accordance with the Committee's guidelines, sought to continue its dialogue with the Committee.

3. During the reporting period, Mexico had submitted reports in connection with its obligations under other human rights instruments, and his Government had ratified the Convention on the Rights of the Child and the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169). The Government of Mexico had also signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

4. In domestic terms, the establishment of the National Human Rights Commission in June 1990 was of particular note. Various constitutional legal and organizational amendments had been adopted relating to the Commission, together with changes in its procedures, intended to consolidate its position as a non-adjudicatory organ for the protection of human rights. The Commission, now firmly established in the Mexican legal order, had already issued a number of reports covering its general programme of work as well as specific issues of particular relevance to the protection of human rights. During its four years of existence, the Commission had formulated over 700 recommendations for the guidance of the competent authorities.

5. In order to guarantee the legality of judicial proceedings, reforms had been introduced to the Federal Code of Criminal Procedure and the Federal Civil Servants' Responsibility Act, and measures had been adopted to ensure strict compliance with articles 14 and 16 of the Constitution with a view to strengthening safeguards during preliminary investigations and subsequent stages of proceedings. A new Federal Act for the Prevention and Punishment of Torture had been adopted, the key elements being the invalidation of any evidence obtained by means of torture, increased penalties for those guilty of torture and compensation for the victim and family members. New guidelines had also been introduced for police and other public officials involved in the detention or imprisonment of citizens.

6. An amendment relating to indigenous communities had been introduced in article 4 of the Constitution, as the result of the realization that members of indigenous communities in Mexico lived in conditions far removed from those called for by the Mexican Revolution and provided for under the Constitution.

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The reform reflected the reality of a multiplicity of indigenous languages and the marginal social conditions affecting most indigenous inhabitants. The two principal elements in the reform were recognition of the multicultural composition of the Mexican population and establishment of constitutional and legal guarantees of full and equal access to the jurisdiction of the State, as well as guarantees of protection of indigenous cultures. It was appreciated that legal initiatives were not enough to improve the social conditions of those living in marginalized situations of extreme poverty.

7. It was against such a background that the armed rebellion in the state of Chiapas, where marginalization and poverty had long prevailed, had erupted at the beginning of the year. The Government had responded with conciliatory measures intended to promote a peaceful resolution, appointing a Commissioner for Peace and Reconciliation and initiating steps for a general amnesty. Human rights had been fully respected, and the National Human Rights Commission had already produced an initial report on the rebellion. Further, more than 140 national and foreign non-governmental organizations had visited the area and conducted interviews.

8. Steps had already been taken to improve infrastructure and social security programmes in the affected area. In a broader context, the National Human Rights Commission had established an indigenous affairs programme, and the Government had brought together various federal departments in a National Commission for Comprehensive Development and Social Justice for Indigenous Peoples, with a view to coordinating social and development policies.

9. Formal negotiations had already begun between the Commissioner for Peace and reconciliation and the Ejército Zapatista de Liberación Nacional (EZLN), and accords had emerged comprising peace commitments, peace agreements and a declaration of peace. He trusted that the accords could soon be signed.

10. Mexico was currently undergoing a profound process of modernization in response to the challenges and demands of mobilization and interdependence, and the increasing expectations of society. The two essential goals were social justice and political democracy.

11. The conduct of genuinely free elections was a key element in that approach, and during the reporting period, electoral legislation had been amended and updated, a process that was continuing in the run-up to the federal elections of 1994. Various political factions had joined their efforts in devising a new electoral system, as a result of which there had been substantial amendment of the relevant constitutional provisions.

12. The reforms included changes in the electoral system governing the composition of the Chamber of Deputies with a view to achieving greater balance and increasing the representation of minority parties by means of a limit on the maximum number of seats awarded to the majority party. One significant result was that no single parliamentary group would in future have the power to approve constitutional reforms, since that would require a two-thirds majority in the Congress of the Union, thus necessitating broad agreement among parliamentary groups. The composition of the Senate had also undergone reform. Other

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electoral reforms included the granting of suffrage to ministers of religion with consequential access to public affairs, as well as improved access for citizens to public service, which had previously been subject to more restrictive birth requirements.

13. A Federal Electoral Register had been established in 1989, on the basis of which a completely new electoral roll had been prepared. Under the reform, a new electoral base had been established and voting credentials issued, bearing the elector's photograph as a security feature to guarantee the integrity of the voting procedure. The whole process had been carefully monitored by the electoral authorities and political parties.

14. Following constitutional reform intended to promote certainty, legality, impartiality, objectivity and professionalism in the electoral process, a new, autonomous agency, the Federal Electoral Institute, had been established in October 1990. The main difference between the Institute and its precursors lay in its decentralized structure and the fact that tasks related to the organization of federal elections, which had previously been dealt with separately, were now the responsibility of a permanent agency. New criminal sanctions had been introduced to safeguard the electoral process. In that connection, a Federal Electoral Court had been established and procedures for challenging results had been consolidated. The procedures for electoral verification and validation had also been amended during the reporting period, with competence being restricted to the electoral authorities; presidential elections, where authority was vested in Chamber of Deputies, constituted an exception.

15. In connection with access to public service, and in the context of Mexican legislation declaring political parties to be organs of public interest, changes had been introduced to electoral legislation with the aim of increasing the amounts of public funding provided to political parties, and of promoting smaller parties. As a result, for the first time limits on campaign expenditures had been established, together with regulations governing access to the media.

16. Mexico had made substantial progress in strengthening its political democracy. While not all problems had been resolved, an enormous effort was being made to consolidate a pluralistic and open society based on the conduct of free and fair elections. The Mexican paradigm was in full accordance with article 25 of the Covenant.

17. In consonance with its political doctrine, the Government of Mexico had cooperated with the international community in the promotion of human rights and fundamental freedoms. In submitting its report to the Committee, the Government sought to strengthen the institutions established to promote the fundamental rights of the individual.

18. Mr. Wennergren, Vice-Chairman, took the Chair.

19. The CHAIRMAN said that section I of the list of issues concerning the third periodic report of Mexico covered the following: the constitutional and legal framework within which the Covenant was implemented; state of emergency; non-discrimination; protection of the family and children; and rights of persons belonging to minorities. In paragraph (a), the reporting State was asked to describe the content of the political development programmes recently initiated, in so far as they might have an impact on the implementation of the provisions of the Covenant. In paragraph (b), it was asked to indicate cases in which the provisions of the Covenant had been directly invoked before the courts or mentioned in judicial decisions. Paragraph (c) sought information on the activities of the bodies for protection of human rights referred to in article 102, section B, of the Constitution, and their connection with the National Human Rights Commission. In paragraph (d), the reporting State was asked to indicate the legal force of decisions or recommendations adopted by the Commission on individual cases and its links with judicial bodies. Paragraph (e) inquired whether a state of emergency had been proclaimed in Mexico, and paragraph (f) inquired as to the results obtained in implementing programmes in favour of children obliged to work because of economic marginalization and street children, and other programmes envisaged to improve the situation in rural and urban areas. Paragraph (g) sought additional information on the scope of the reforms in the laws concerning political parties and the electoral system. In paragraph (h), the reporting State was asked to comment on the effect of the recent events in the Chiapas and other regions on the exercise of the rights guaranteed under the Covenant, particularly articles 25, 26 and 27. Paragraph (i) inquired about measures taken to resolve the land disputes referred to in paragraphs 203 to 210 of the report, their results, and how indigenous practices and customs had been taken into account in the procedures related to those issues. Paragraph (j) raised the question of the representation of indigenous populations and other minority groups in Congress and other national institutions, and in the Mexican administration.

20. Mr. GONZÁLEZ FELIX (Mexico) said that he had spoken at length, in the statement he had just made, on the contents and scope of the constitutional and legal reforms recently adopted by the Mexican Congress, which were the result of a broad-based effort to meet the expectations of the Mexican people regarding the reform and democratization of the entire electoral process. Those reforms included provisions raising the minimum representation of minority parties in Congress and making it impossible for any one political party to command the two thirds majority needed to amend the Constitution. They also included provisions regulating the financing of electoral campaigns, the machinery by which financing was provided and the purchase by political parties of time in the mass media in connection with election campaigns - all of which were intended to ensure the fairness and impartiality of the election process - as well as provisions to ensure the presence of at least six citizens without party affiliation on all electoral bodies. In addition, the leaders of the eight major political parties had recently signed an agreement which included provisions intended to further strengthen the impartiality of the election process through the adoption of measures to guarantee the impartiality of electoral officials and the appointment of a federal prosecutor to investigate and prosecute infringements of electoral law. The political parties were continuing their consultations with a view towards further strengthening the

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fairness of the election process, and had introduced a new bill in Congress carrying the reforms further.

21. Referring to section I (b) of the list of issues, he said that during the period under review, there had been no cases in which the provisions of the Covenant had been directly invoked before the courts, as all the rights guaranteed under the Covenant had been incorporated into the Constitution; where human rights cases arose, they were brought before the courts under the Constitution. With reference to section I (c), he said that article 102, section B, of the Constitution had now been fully implemented. The relationship between the bodies established by the States and the National Human Rights Commission was one of complete harmony and cooperation. Apart from ensuring the protection of human rights, the state agencies had taken a number of additional steps to prevent violations of human rights and to spread public knowledge of those rights. In September 1993, a Mexican federation of public human rights bodies had been established to further the effective legal defence of human rights and the prevention of human rights violations by coordinating the work of the various official and unofficial bodies. Those additional steps taken at the federal level were in no way intended to substitute for or replace the work being done by the official human rights bodies established under article 102, section B, of the Constitution, or the National Human Rights Commission.

22. Turning to section I (d), he said that the National Human Rights Commission was an autonomous body empowered to deal with administrative actions taken by public authorities affecting human rights. It did not deal with jurisdictional, labour or organizational matters, as other machinery was provided by law for dealing with those areas. Although its decisions were recommendatory, the bodies to which they were addressed were required to reply within 15 days and to comply with the recommendations made if they accepted them. In addition, the Commission's recommendations were publicized through the information media. The Commission's established and recogized effectiveness had contributed to the creation of a climate of increased awareness of human rights in Mexico.

23. Referring to section I (e), he said that no state of emergency had been proclaimed in Mexico since May 1942, as no situations falling under article 29 of the Constitution had arisen since that time.

24. Turning to section I (f), he noted that in 1991 Mexico had adopted all the provisions contained in the Convention on the Rights of the Child. The employment of minors was regulated under the Federal Labour Act and inspections were carried out regularly to determine whether and under what conditions minors were employed by enterprises. If any violations of the law were discovered, the labour authorities could levy fines. Additional legislation to protect minors was also being prepared. Moreover, a programme of vocational training had been initiated under which three specific training courses had been carried out in the paper-making industry. Further steps were being taken to integrate young people into the labour force, for example by issuing work permits to young people 16 to 18 years of age.

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25. The problem of street children was extremely complex, and its ultimate solution depended on a strategy of prevention. Thus, a major study of the situation of street children in Mexico City had been conducted with the cooperation of UNICEF, the municipal government and many private and public organizations. Support to the nuclear family, which was ultimately responsible for the care of children, was the focus of institutional activities. Given that the problems of street children were complex and multifaceted, the response must be multisectoral. Only a truly unified effort could provide comprehensive response and have a real impact on their quality of life.

26. In conjunction with the World Summit for Children, the Mexican Government had established strategies and programmes of action on behalf of children. The President received a progress report every six months that was disseminated through the media. A National Programme of Action for Children had been drawn up, not to duplicate existing national programmes but to coordinate and strengthen the goals and strategies contained in the National Development Plan 1989-1994. It covered the areas of health, education and basic sanitation, and also focused on children in especially difficult circumstances. Implementation of those programmes followed a three-pronged approach: direct attention to street children in their neighbourhoods or workplaces, prevention, and counselling services. The major goals were to promote changes in child behaviour, reintegrate children into families and prevent them from being put out on the street. In addition to inter-institutional coordination, agreements established with international organizations, such as UNICEF, had achieved a significant social impact, as reflected by the active participation of children in the activities designed to benefit them. Ongoing training had been provided for staff working with street children to promote changes in attitude and to reinforce the sense of human solidarity that would allow them to provide the best possible services.

27. Concerning section I (b) of the list of issues, he noted that detailed information had been provided during the introduction to the report. The delegation was ready, however, to provide any additional information required.

28. With regard to section I (h), he said that the conflict in the Chiapas region had not affected the participation of the people in public affairs; on the contrary, a significant increase in political awareness had occurred and public participation had actually increased. In the course of the current consideration of a possible change in the date for the election of a governor, political parties, citizens' groups and individuals had participated actively. As far as articles 26 and 27 of the Covenant were concerned, as a result of the events in Chiapas, the Government had redoubled its efforts to provide protection to indigenous groups, who were among the most vulnerable to violations of human rights. The National Human Rights Commission had visited indigenous communities in the state to receive information concerning the various complaints submitted, which were under investigation. Protection of human rights was never simple, even under normal conditions; it had been made much more difficult by the armed conflict and its aftermath.

29. Turning to section I (i) of the list of issues, he said that measures taken to resolve land disputes included amendments to articles 4 and 27 of the

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Constitution, strengthening the protection provided under the law for the language, culture, customs, resources and social organization of indigenous groups, and guaranteeing their members access to jurisdiction. Greater protection was also provided for their land, including lands held in common ownership. As a result of the constitutional reform, an office of the public prosecutor and a tribunal for agrarian matters had been established. The public prosecutor provided support, assistance and legal representation to indigenous communities, and the land tribunals considered cases brought before them and issued definitive judgements. In the consideration of cases involving land belonging to indigenous groups, their customs had to be taken into account. Either the proceedings had to take place in their indigenous language or interpretation had to be provided.

30. One of the most complex problems faced by indigenous communities was the legal defence of their land, and the National Human Rights Commission had issued over 20 recommendations to federal, local and municipal authorities whose actions had affected the rights of indigenous communities. When those communities had been the victims of abuses, the Commission had also demanded respect for the provisions of article 4 of the Constitution.

31. Concerning section I (j), he pointed out that a system of quotas for representation of members of indigenous groups in Congress, in national institutions and in the civil service had never been established, because in Mexico, indigenous peoples had never been treated as minorities requiring special status. Consideration for those groups had been part of the country's general policies, which emphasized programmes for their integration and assimilation as members of a multiracial and multicultural society. The movement to seek minority status by the leaders of indigenous groups was relatively recent, becoming more pronounced after 1992.

32. Mr. Ando resumed the Chair.

33. Mr. BRUNI CELLI said that the news of the establishment of the National Human Rights Commission was welcome, as was the noteworthy progress made in human rights law. Apparently, however, the Mexican authorities were not following the recommendations of the Commission. Its 1990-1991 report had contained over 10,000 allegations of human rights violations; it had also issued 269 recommendations, and some concern had been expressed because 136 of those recommendations had not been followed. In 1992, the Commission had made public its concern about the response to its report on the part of the authorities. More information was needed on proposals and measures taken with regard to those recommendations.

34. Turning to paragraph 18 of the report (CCPR/C/76/Add.2), he said that according to his understanding of the "ability to govern clause", if a political party received only 35 per cent of the popular vote, it would automatically be awarded 51 per cent of the seats in the Chamber of Deputies. A more specific explanation of that clause was needed, since it appeared contrary to the spirit of the provisions of article 25 of the Covenant guaranteeing the free expression of the will of the electors. Regarding the reference in paragraph 47 to article 133 of the Constitution, which stated that international human rights treaties and conventions were part of Mexican domestic law, he found it

difficult to harmonize the provisions of the Covenant with electoral laws that were not in conformity with the basic principle of representation, and would welcome further clarification.

35. In conclusion, he inquired whether the third periodic report had been made public through the media, had been circulated to non-governmental organizations or had been made available for consultation by both public and private human rights organizations.

36. Mr. AGUILAR said that the "ability to govern clause" referred to in paragraph 18 of the report needed clarification. He found it surprising that a party that had obtained 35 per cent of the vote should be entitled to a majority in the Chamber of Deputies; that would frustrate the will of the people, in violation of article 25 of the Covenant. In most other countries with a parliamentary system, if no party obtained an absolute majority of the vote, the various parties held negotiations in order to determine the composition of the legislature in accordance with the democratic principles.

37. The National Human Rights Commission had complained that its recommendations were not being implemented by the Government; it would be interesting to learn whether, in such cases, the Commission could act as counsel for a private party and could institute legal proceedings directly.

38. He would welcome additional information on the status of women in Mexico and on whether affirmative-action measures had been enacted.

39. The Government should clarify paragraph 81 of the report, which stated: "There has recently been a trend towards interference in the internal affairs of States under the pretext of protecting human rights throughout the world. This runs counter to the principles of non-intervention and respect for State sovereignty enunciated in a number of international instruments, including the Universal Declaration of Human Rights". The Government should indicate whether it participated in international humanitarian actions in cases of massive violations of human rights, as in Somalia or Bosnia and Herzegovina.

40. Lastly, he would appreciate information on the steps taken to publicize the report.

41. Mrs. CHANET said that she, too, found paragraph 81 surprising, as well as irrelevant. In undertaking to guarantee the rights embodied in the Covenant, Mexico had partially surrendered its sovereignty. Furthermore, the Committee's role in monitoring the fulfilment by a State party of its obligations under the Covenant was an integral part of the Covenant.

42. It would be useful to learn whether the envisaged legislation giving members of the clergy the right to vote was intended to afford them full access to public life and, if so, whether the Government would then be able to withdraw its reservations to the Covenant especially on articles 18 and 25. She noted, furthermore, that the reservation to article 25, restricting the office of President of the Republic and the post of magistrate to Mexican nationals by

(Mrs. Chanet)

birth applied only to subparagraph (b) and not to subparagraph (c). In the light of the Mexican representative's statement that the Government was considering the withdrawal of that restriction in respect of the Presidency, she wondered whether the same would apply to the magistracy.

43. With regard to the "ability to govern clause", she shared the same concerns of other speakers. All experts in constitutional law agreed that the current electoral system favoured the governing party, which had, indeed, been in power for over 60 years. In addition to the advantages which it enjoyed, the ruling party had been accused, most recently during the 1992 elections, of removing the names of supporters of opposition candidates from the rolls. While complaints had been filed with the electoral tribunals, they had all been dismissed on technical grounds. The Government should explain what steps it was taking to ensure free and fair elections, as well as the means by which political parties and election campaigns were financed.

44. Since the establishment of the National Human Rights Commission in 1990, some 4,800 complaints had been registered, but criminal proceedings had been instituted in only a few dozen cases. The Commission had complained that its recommendations were not being implemented and that it was not empowered to bring complaints before the courts. In a few well-known instances, such as the Madrigal case, the Commission had not even been notified that prosecutions were under way or that convictions had been handed down. Accordingly, she would be grateful for additional information on the Commission's role and functioning.

45. She also found it surprising that, despite the magnitude of the events in Chiapas, the Government had not deemed it appropriate to declare a state of emergency. It was not true that fundamental rights had not been suspended; during the period from 2 to 12 January 1994, a number of persons had been arrested without warrants, and people had been prevented from entering or leaving a town in the area. Article 4 of the Covenant, permitted some restrictions on freedom of movement in the event of a state of emergency; it was unclear why the Government had not availed itself of that provision.

46. Mr. MAVROMMATIS said that it would have been preferable for the report to have been submitted earlier so that the Committee would have had time to absorb the wealth of information it contained.

47. With regard to the problems relating to Mexico's indigenous populations, he associated himself with what had been said by previous speakers. In reading the report, he had formed the impression that those problems were due partly to the remoteness and inaccessibility of the regions in which indigenous people lived, and partly to the contrast between their laws and customs and those of the Mexican State. The Government must ensure that human rights norms were applied equally in all parts of the country.

48. As to the "ability to govern clause", he noted that the electoral systems in other countries, including the United Kingdom, enabled parties which obtained less than 35 per cent of the vote to enjoy a comfortable majority in Parliament. Nevertheless, the Government should explain why its system differed from that of

(Mr. Mavrommatis)

most other countries in that members of Parliament could not be re-elected for a second consecutive term, and how that could be reconciled with article 25 of the Covenant. The provision excluding members of the clergy from public office should also be clarified. Furthermore, if more than three political parties competed in the elections, each obtaining almost an equal share of the vote, the relative-majority system would probably result in the second-ranking party acquiring more power than it was entitled to.

49. Drawing attention to paragraph 22 of document HRI/CORE/1/Add.12, which stated that political parties must obtain at least 1.5 per cent of the total number of votes in order to continue to be legally registered, he asked whether a party needed to be registered in order to exist, and what difference there was between parties that were permanently registered and those that were not permanently registered.

50. While the National Human Rights Commission had done a commendable job in promoting awareness of human rights and fundamental freedoms, he noted that non-governmental organizations referred to it as the "governmental human rights commission", which indicated that there were doubts as to its impartiality and effectiveness. The best way to strengthen the Commission's independence, as well as the public perception of its independence, would be for the Government and the people to respect and implement its decisions.

51. Mr. PRADO VALLEJO said that, while Mexico had made substantial progress in recent years in strengthening its human rights legislation, it should be more specific about how that legislation was applied in practice.

52. He endorsed the comments made by Mrs. Chanet regarding paragraph 81 of the report, and recalled that one of the basic principles of the inter-American human rights protection system, as reflected in the Andean Pact, was that the defence and promotion of human rights in no way infringed upon the principle of non-interference in the internal affairs of States.

53. Further information should be provided on the impact on human rights of drug trafficking and the measures to combat it.

54. While welcoming the establishment of the National Human Rights Commission, he questioned its effectiveness, since its recommendations were not binding and, according to reports received by the Committee, were sometimes not implemented or not made public.

55. Likewise, while the establishment of the Indigenous Groups Programme was a sound initiative, and while he welcomed the amnesty granted to the rebels in Chiapas, he had received information indicating that indigenous communities which had taken part in the armed uprising had been subjected to excessive violence and repression. The Government should clarify whether such reports had been investigated and, if they were true, whether those responsible had been punished.

56. There was nothing in the report or the Government's replies to indicate that there was any incompatibility between traditional laws and customs and the

(Mr. Prado Vallejo)

Constitution. The Committee had received reports, dating back to 1990, of human rights violations committed by the security forces against indigenous groups. It was unclear whether such violations were continuing despite the official statements that they would not be tolerated. It was the Government's responsibility to investigate the complaints submitted by the regional human rights commissions, and to publicize the results of those investigations and the action taken.

57. Lastly, he endorsed the comments of previous speakers with regard to the "ability to govern clause".

The meeting rose at 1.05 p.m.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Mexico (continued) (CCPR/C/76/Add.2)

1. At the invitation of the Chairman, Mr. Gonzalez Felix, Mr. Collado Martinez, Mr. Carillo Poblano and Ms. Flores Liera took places at the Committee table.

2. Mrs. EVATT said that the Committee would welcome additional information cn the ongoing reform of the political system in Mexico. Recent events in that country had revealed a lack of confidence in the electoral process, and she wondered what steps were being taken to ensure that representatives were elected in accordance with the freely expressed will of the electors, as provided for in article 25 of the Covenant. In view of the repeated allegations of electoral fraud, the Government of Mexico should consider inviting independent observers to monitor the forthcoming elections.

3. She was also concerned about the reported lack of special representation of the indigenous minority in the Government, and wished to know what was being done to ensure its participation in local and national elections.

4. She also sought clarification as to whether, under the current electoral system, a person who was not a member of a recognized party could be elected to national office.

5. On the question of the land rights of the indigenous population, it would be interesting to learn how the land-use rights of that population had been affected by the recent amendment to article 27 of the national Constitution. Given the close link between the use of the land and the cultural practices of the indigenous community, moreover, she also wished to know whether, in accordance with article 27 of the Covenant, the indigenous population had been invited to participate in the review process which had culminated in the constitutional amendment.

6. Recent events in Mexico had raised doubts about the effectiveness of the mechanisms currently in place to prevent human rights abuses and to resolve the underlying problems that caused them. There had been complaints, for example, about the slow working of the justice system in disputes over land. She wished to know what specific steps had been taken to resolve the problem of displaced persons, which had been reported by Amnesty International, and to prevent its recurrence.

7. Mr. SADI asked whether the fact that several of the representatives of Mexico had dealt with both human rights problems and the problem of narcotics meant that the Government of Mexico perceived a link between the two issues.

8. The Committee would be interested to know the extent to which the Mexican Government saw the Covenant as being relevant to its current modernization programme. He noted the statement that the Covenant was never invoked in

national courts, and wondered whether that situation was due to the Government's failure to promote public awareness of the instrument.

9. He would welcome additional information on street children in Mexico and on the underlying causes of that phenomenon. He noted that the problem seemed to be growing, despite the measures taken by the Government. Information on the related phenomena of child prostitution and the use of children's organs for transplants would also be welcome. He also wished to know whether medical clinics in Mexico engaged in practices to determine the gender of children and whether such practices were regulated by the Government.

10. He would welcome clarification of the statement in paragraph 367 of the report that juveniles under the age of 18 years could not be prosecuted. It was not clear to him how the State would deal with the crime of an offender who was 17 years old, for example.

11. Mr. EL-SHAFEI expressed concern over the Mexican Government's view contained in paragraph 81 of its report that international concern about human rights violations in that country constituted interference in the internal affairs of Mexico and ran counter to the principles of non-intervention and respect for State sovereignty. He preferred to think that that statement was the result of infelicitous drafting by the authors of the report rather than the considered view of the Government of Mexico.

12. He was also disturbed by the implication in paragraph 35 of the report that political parties, trade unions, business associations, churches, peasants, rural and urban organizations and indigenous communities were somehow not part of the "Mexican State". A State was in fact comprised of such organizations, and to suggest otherwise merely reinforced the perception of the permanent nature of the power held by the ruling group.

13. He would welcome clarification of the mandate of the National Human Rights Commission (CNDH) and the precise scope of its authority.

14. With reference to article 25 of the Covenant, which dealt with the question of elections and universal suffrage, he wondered why the Government of Mexico felt it necessary to institute reforms if it considered that the current electoral system was compatible with article 25 of the Covenant.

15. With reference to article 27 of the Covenant, the Committee would be interested to learn of the efforts being made to make the national legal system more responsive to the needs of the indigenous community.

16. Mrs. HIGGINS said that she was impressed by the seriousness with which Mexico took its reporting obligations and the candour and realism with which it shared its problems and shortcomings. The third periodic report referred to previously asked questions and provided excellent answers to the new list of questions. Against that background, therefore, the reference to "interference in the internal affairs of States under the pretext of protecting human rights" in paragraph 81 of the report was most unfortunate. Human rights and sovereignty were not partners. The former were the rights of peoples and not of Governments and were thus the legitimate concern of the international community. Governments were in fact but the servants of the people.

(Mrs. Higgins)

17. She expressed concern that the National Human Rights Commission's links to the executive branch might compromise its effectiveness, and noted that the Commission's mandate was limited and its recommendations not always implemented. While the Commission discharged its mandate with vigour, that very vigour might have the unintended effect of discouraging recourse to the regular judicial channels for the prosecution of human rights abuses.

18. The Committee would welcome further information on the penal action that had been taken against public servants in Mexico, and in particular whether that action had merely been initiated or whether the public servants in question had already been convicted.

19. On the question of electoral reform, it would be useful to learn how the members of the federal agency responsible for electoral reform were selected and what action had been taken following the threats made against members of the opposition. She expressed concern at the transfer of financial resources by the Government to certain regions during the pre-election period. Such transfers were likely to make voters favourably disposed to the party that effected the transfers.

20. Mr. POCAR welcomed the improvements that had taken place in Mexico in the areas of protection of human rights and the practical application of the law since the submission of the second periodic report. In that connection, it would be useful to know how effective were the activities of the National Human Rights Commission and what was the practical relationship between the Commission and the judiciary.

21. He expressed surprise that a state of emergency had not been declared following the events in Chiapas. While, in time of public emergency, article 4 of the Covenant permitted States to derogate from certain of their human rights obligations, including freedom of movement, and allowed national authorities greater powers of search and arrest and detention incommunicado, such derogations must follow the official proclamation of a state of emergency. Furthermore, the application of emergency measures must not involve discrimination solely on the ground of such considerations as race, colour or language. There had been numerous reports that, following the Chiapas uprising, emergency measures had been applied disproportionately to the indigenous community. He would therefore welcome information on the steps that had been taken to safeguard the human rights of individuals, especially those of the indigenous population, following the events in Chiapas.

22. Mr. LALLAH said that the perspective from which paragraph 81 of the report had been drafted was incorrect but that the damage had been repaired to some extent by the Mexican Government's reaffirmation in paragraph 83 of its belief that it was through international cooperation and observance of the purposes and principles of the Charter that respect for human rights might be encouraged at the international level.

23. On the question of elections, which was the subject of article 25 of the Covenant, additional details would be welcome on the register of electors, the qualification of electors, the percentage of the voting-age population included in the electoral list and the percentage of the electorate which actually took part in elections.

(Mr. Lallah)

24. With respect to 1 (i) of the list of issues, there was a tendency to confuse non-discrimination with the exercise of minority rights. The real question, however, was the extent to which Mexican society respected the rights of minorities and the degree to which that respect was reflected in the participation of minorities in public affairs.

25. Mr. FRANCIS asked, with reference to the problem of street children, whether there were youth programmes at the federal and state levels to take care of older homeless young people and adults.

26. Mr. WENNERGREN recalled that, when presenting the second periodic report, the Mexican representatives had said that neither the Covenant nor any other international instrument could have been ratified if it had been in conflict with Mexico's Constitution. He wondered whether that had perhaps created a legal presumption that the Constitution and the existing federal legislation sufficed because of their compliance with the Covenant, so that no effort had been made to look into any possible lacunae or to invoke the Covenant before the courts.

27. Speaking from his own experience as Swedish ombudsman, he would also like to know whether the National Human Rights Commission (CNDH) was at all hampered in its investigations by its position outside the regular structures of Government: could it, for instance, call on the police and other authorities to help it investigate? Specific examples would be appreciated.

28. Mr. GONZALEZ FELIX (Mexico) said that it had indeed been a problem to decide with which of the three branches of Government in Mexico CNDH should be affiliated. It had been attached to the Office of the Chief Executive as a government body. It had very broad powers of investigation, and one advantage of the link with the executive branch was that it could directly reach heads of departments, who, under the Responsibility of Public Officials Act, must respond under penalty of dismissal. CNDH consequently had no problem in getting information or assistance.

29. The Commission, after investigating, made recommendations that were then made public. It therefore acted as a moral force in the country, and there was growing recognition of its importance. In a recent period, for instance, out of 653 CNDH recommendations, 13 had not been approved by the authorities, 307 had been approved and fully implemented, 326 had been approved and partly implemented, 5 had been approved but no proof had been supplied of their implementation, and 2 had been complied with unsatisfactorily.

30. The Office of the Attorney General had established a department specifically to ensure compliance with CNDH recommendations. It had been felt in Mexico, however, that if the National Human Rights Commission was officially tied to the judicial branch, conflicts would arise. Thus, in answer to Mrs. Higgins' question, the link between CNDH action and court action in criminal matters was not as yet very clear. In cases of torture, for instance, or compensation for injury, the regular authorities, on the Commission's recommendation, brought an action before the penal authorities.

31. As to the de jure and de facto situation with regard to human rights, it was true that poverty, backwardness and the situation of the indigenous people

(Mr. Gonzalez Felix, Mexico)

all impeded the implementation of human rights legislation. However, complaints had diminished markedly thanks to police action and investigations prompted by the firm position taken by the Government. Drug trafficking was not an obstacle to the observance of human rights. Some constitutional changes had been made to facilitate the prosecution of drug traffickers, and the Ministry of Foreign Affairs also dealt with the drug problem, but separately from the human rights issue.

32. Regarding Mexico's publicizing of its periodic reports, it was customary for the Ministry of Foreign Affairs to meet with non-governmental organizations in the country whenever a delegation was scheduled to attend an international human rights event or present a report before a human rights body, and to issue press communiqués after the event. Its periodic reports to the Committee were not published as such by the Government, but they were widely circulated after the United Nations had issued them.

33. On the matter of the position taken in paragraph 81 of the report regarding interference in the internal affairs of States under the pretext of protecting human rights, his Government fully understood that the protection of human rights was part of its international obligations, and international cooperation on human rights was a government policy. Mexico worked with the human rights bodies of the United Nations and other international human rights organs, including the Inter-American Commission on Human Rights. The Government was simply sceptical when the issue of human rights was brought up in respect of certain internal issues.

34. With regard to humanitarian activities, Mexico had supported the interventions in Bosnia and Somalia. It did, however, agree with the position of the Secretary-General of the United Nations himself that both human rights and State sovereignty must be protected.

35. Mr. COLLADO MARTINEZ (Mexico), responding to questions on electoral issues, said that the "ability to govern" clause (para. 18 of the report) regulating election to the Chamber of Deputies had been repealed in the legislative reform of 1993. In 1989, however, that provision, as detailed in the report, had been in effect, and it had been drafted because of concern about the proper functioning of the Chamber of Deputies, which needed not only to reflect as fairly and as representatively as possible the political forces in a pluralist society, but also to take decisions, pass legislation and generally fulfil its representative functions. It had been felt at the time that could best be done by strengthening the hand of the majority party. It should be noted, however, that there had never been an opportunity to apply the clause in question because the proportion of votes obtained by the majority party in the 1991 election (over 60 per cent) far exceeded the 35 per cent that would have brought the machinery of the clause into effect. Following the 1993 reform, the provisions of sections I and II of article 54 of the Constitution (outlined in paras. 13 and 14 of the report) remained unchanged; but section III of article 54, as now amended, provided that any political party that met the requirements of sections I and II was entitled to have, in addition to the candidates elected as a result of its relative-majority share of the vote, a given number of deputies, chosen according to rank, from its regional list of candidates in the multinominal electoral districts, the number to be determined on the basis of its relative standing in the national election. Under the other amendments to

(Mr. Collado Martinez, Mexico)

article 54, no political party could now have more than 315 deputies elected according to the two principles, as against the maximum of 350 under the old Constitution (para. 16 of the report). That change was significant because any future constitutional amendments could be adopted only with the approval of 333 deputies, thus henceforth requiring the support of minority political parties.

36. Concerning the rules for election to the Senate, before the 1993 reform the Senate had been composed of officials elected solely by relative majority and not by proportional representation, thus ensuring that only one party controlled all seats in the Senate. The new rules, by assigning three Senate seats on the basis of relative majority and one Senate seat to the party with the next highest share of the vote, gave smaller parties and political groupings a greater voice in the Government. Senators could not be elected solely on proportional grounds as in the Chamber of Deputies because membership in the Senate was limited to the 32 federative entities that made up the Federation of Mexican States.

37. On the question of how Mexico's electoral laws were being implemented, he said that general elections would be held on 21 August 1994 to elect a President, senators and deputies. Great efforts were being made by the Government, the electoral authorities, the political parties and citizens in general to ensure that the elections would be fully democratic, authentic and competitive. To that end it was necessary to draw up a reliable and complete electoral list; to ensure the impartiality of the electoral authorities in the performance of their functions; to establish conditions of equality between the competing political parties; and to safeguard the freedom to vote. Work on the electoral list had been started in 1990 by the Federal Election Commission; the process had involved census visits to sixteen and a half million households. The list was now being updated and verified, using information received from various bodies including the civil registry, in respect of the legal status of citizens, legal bodies, and the Secretariat of Foreign Relations, in respect of the suspension of political rights or loss of nationality in certain cases. Some 45 million people were registered on the list, of whom 42 million had already been issued with voter identification cards. Registration had ended on 28 February 1994 but the process of issuing cards would continue until 17 July 1994. The list had been prepared in record time, and significant human and material resources had been required.

38. For the first time, limits had been placed on the campaign spending of political parties so as to ensure equality between the competing parties. Those limits had been determined by the General Council of the Federal Electoral Institute in January and February 1994. Efforts were also being made to ensure equal access of political parties to the communications media, particularly radio and television.

39. On the question as to why so many reforms were being carried out if the electoral system already accorded with article 25 of the Covenant, he said that many countries which were regarded as democratic carried out electoral reforms and no one suggested that they were not complying with the fundamental principles of the Covenant. His Government believed that the electoral system needed constant adjustment, even though the major characteristics of a democratic system were already in place. Furthermore, electoral and political reforms was a cumulative process, covering different areas. In 1953, women had

(Mr. Collado Martinez, Mexico)

been accorded suffrage; in 1963, the Chamber of Deputies had been opened to parties other than the majority party; in 1970, the voting age had been lowered to 18; in 1977, proportional representation had been introduced in the Chamber of Deputies; and in 1993, electoral reforms had been introduced.

40. Mr. CARILLO POBLANO (Mexico) said that in response to the question as to how the Mexican electoral authority functioned, a set of documents would be provided to members of the Committee to supplement the information provided in the report. The new information referred to the basic characteristics of the Mexican electoral system, the functions of the Federal Electoral Institute, the background to the electoral reforms of 1993, the stages of the electoral process of the current year leading up to the general elections in August 1994, and the Pact for Peace, Justice and Democracy signed by the Mexican political parties in 1993.

41. From 1946 to 1990, the electoral authority had been part of the Ministry of the Interior; the Federal Electoral Institute, established in 1990, was a permanent autonomous body, independent in the management of its resources and administration. It consisted of managerial bodies, technical and executive bodies and monitoring bodies at three levels; the national level (the General Council of the Institute); the state level (local councils in the 31 federal entities); and the district level (district councils in the 300 electoral districts). There were also 100,000 polling stations.

42. It should be noted that citizens and political parties participated at all levels of electoral organization. Electoral monitoring was carried out by national observers, but the possibility of some kind of international monitoring was being considered; the political parties would determine the characteristics and scope of such monitoring.

43. With regard to the voting rights of the Catholic clergy, article 130 of the Constitution was being amended to allow for the possibility of "active" or "passive" voting by such persons.

44. Political parties which won less than 1.5 per cent of the vote in an election were able to re-register; however, if they won less than 1.5 per cent of the vote in a second election, they were not able to do so.

45. Information on electoral issues was being disseminated through electoral bodies, the communications media, non-governmental organizations and academic and research institutes in Mexico and abroad.

46. Mr. GONZALEZ FELIX (Mexico), referring to the questions about the situation in Chiapas, said that with regard to the state of emergency, his Government had not found it necessary to suspend individual guarantees; 140 non-governmental organizations had visited Chiapas and that would not have been possible if individual guarantees had been suspended. Full freedom of movement had been maintained at all times, and persons wishing to pass through conflict zones had done so at their own risk.

47. An investigation had been conducted by the National Human Rights Commission regarding respect for human rights in Chiapas and a preliminary report issued on 22 February 1994, had referred to specific cases in which there could have been

(Mr. Gonzalez Felix, Mexico)

human rights violations; it had been found that 23 people had disappeared and 70 of 100 detained persons could have been subjected to maltreatment; cases in which summary executions might have occurred were being investigated by civilian and military authorities. It was hoped that a further report would be issued soon on the progress of investigations and on specific action taken. The results of the investigation had been made available to the public and to Mexican and foreign non-governmental organizations.

48. In a military situation there was provision under Mexican law for persons to be arrested and brought before the authorities; care had been taken to ensure that human rights violations had not occurred.

49. With regard to the indigenous populations, one of the results of the Chiapas negotiation had been the promulgation of a law regulating article 4 of the Constitution, which would be a general law for indigenous populations. At the same time, a special commission on development and social justice for indigenous peoples had been established; one of its specific tasks was to ensure that the agreements benefiting the indigenous population in Chiapas were extended to other areas of Mexico.

50. On the question of whether there had been discrimination in Chiapas, he noted that the groups and communities in the uprising had basically been indigenous communities, so that there had been no discrimination within the movement itself. The uprising could have been the result of backwardness or neglect of the indigenous population, but was not a discriminatory situation. With regard to the treatment of indigenous minorities, one of the objectives of the new commission was to promote the participation of indigenous peoples and to ensure that there was no discrimination against them; indigenous peoples were not treated as minorities because they constituted the roots of the Mexican people.

51. With regard to land ownership, article 27 of the Constitution had been amended over the past five years; since the privatization of land could have serious repercussions in the case of lands belonging to the indigenous populations, article 27 now included a specific mechanism to protect such lands of indigenous populations; his Government was very concerned that that article should not be implemented to the detriment of those peoples.

52. Ms. FLORES LIERA (Mexico), referring to the questions about women's rights in Mexico, said that Mexico was party to many international conventions at the international level, within the United Nations, and at the regional level, within the Organization of American States (OAS); it had been a party to the Convention on the Elimination of All Forms of Discrimination against Women since September 1981. At the domestic level, the legal equality of men and women was recognized under the Constitution. Special legal protection was provided to women in the area of criminal legislation in respect of sex crimes; in the area of labour legislation, working mothers were accorded certain rights during the pre- and post-partum periods, including the right to return to the same position with the same salary. Day-care facilities were available for working mothers. In the area of civil law, there were provisions to protect women while maintaining the legal equality of men and women, including the right to alimony, the right to make contracts, and the right to decide on the education of their children and to determine the apportionment of conjugal property.

(Ms. Flores Liera, Mexico)

53. Juvenile offenders had criminal responsibility; cases involving juveniles were referred to juvenile councils and the penalties ranged from warnings to assignment to special institutions.

54. Mr. GONZALEZ FELIX (Mexico), referring to the question of why the Covenant was not quoted in Mexican courts, said that it was common for non-governmental organizations and human rights groups in Mexico to quote directly from the Covenant in communications to United Nations and OAS bodies. Under article 133 of the Constitution, the Supreme Court of Justice was able to consider cases relating to international treaties. His Government was trying to bring about greater dissemination of the Covenant and to ensure that it was used by members of the legal profession.

55. On the question of whether the Covenant provided a framework for the modernization process in Mexico, he said that although Mexico had made a reservation to the Covenant relating to the political rights of Catholic clergy, constitutional changes had been made and the possibility of removing that reservation was being considered; such efforts aimed to harmonize national legislation more closely with the requirements of the Covenant.

56. The problem of child prostitution arose not so much within Mexico as between Mexico and foreign countries; in such situations, his Government would be the first to refer to the requirements of the Covenant. His Government was very concerned about child prostitution and traffic in children's body parts; no allegations had been proved, but various legislative and judicial bodies were working on such problems. The problem of genetic manipulation was unknown in Mexico. There were programmes to deal with the problem of street children; his Government was developing systems of prevention through diagnosis of the situation and the adoption of effective measures.

57. He had information about the case of Mr. Madrigal in a communication from the National Human Rights Commission; on 13 September 1992, Mr. Madrigal had made a complaint of arrest and torture by the judicial police of the Federal District; a preliminary investigation had been initiated, but so far Mr. Madrigal had not provided information to enable the investigation to proceed.

Right to life, liberty and security of person, treatment of prisoners and other persons deprived of their liberty, and right to a fair trial (arts. 6, 7, 9, 10 and 14 of the Covenant) (Sect. II of the list of issues)

58. The CHAIRMAN read out section II of the list of issues concerning the third periodic report of Mexico, namely: (a) the reason why no proposal had been put forward with a view to amending article 22 of the Constitution on the death penalty since there seemed to be a clear consensus in favour of abolishing the death penalty which had not been applied since 1929; (b) strict application of steps taken to avoid the recurrence of violations of article 10 of the Constitution and of the Federal Firearms and Explosives Act and its regulatory text by members of the police and the national security forces during the period under review; (c) results obtained by the National Human Rights Commission and the Office of the Attorney General of the Republic in their investigations into cases of disappearance still unsolved as at 31 December 1991; (d) the effect of

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(The Chairman)

the recent events in the Chiapas and other regions on the exercise of the rights guaranteed in articles 7 and 9 of the Covenant; (e) the categories of public servants who had been penalized for committing acts of torture and sanctions taken against them as well as the result of criminal proceedings brought against particular public servants in that connection; (f) information on the respective activities of the "Comite Ciudadano Plural" and of the National Human Rights Commission (CNDH) with regard to the supervision of prisons; (g) action taken on the proposals of the National Human Rights Commission regarding respect for the rights of offenders and their reintegration into society and whether the standard regulations proposed for all prisons in the country had been adopted by the prison administrators; (h) the number of complaints of arbitrary detention lodged since the submission of the report and the investigations, if any, they had given rise to as well as the results of such investigations; and (i) the circumstances under which free legal assistance was provided.

59. Mr. GONZALEZ FELIX (Mexico) said with respect to section II (a) that while abolitionists had succeeded in ensuring that the death penalty was not applied in Mexico, they had been unable to have it deleted from the text of the Constitution. In 1993, a symposium on the death penalty organized by CNDH and the Legal Investigations Institute of the National Autonomous University of Mexico had revealed widespread opposition to the application of that penalty. That outcome, coupled with the powers that the law conferred on CNDH to propose to the country's authorities amendments to legal provisions that it felt would result in better protection of human rights, pointed to the likelihood that an initiative in that area would be submitted for discussion in the future.

60. Concerning section II (b), in the period under review, the Office for the Protection of Human Rights had carried out 3,437 preliminary investigations of complaints of human rights abuses against civil servants on its payroll. As a result of the investigations carried out in 1993, 64 civil servants had been relieved of certain functions, 105 had been dismissed, 86 suspended and 136 reprimanded. During the period November 1988 to December 1993, 28,397 firearms of various calibres and types had been seized in connection with various firearms violations.

61. With respect to section II (c), he said that in order to enable their staff to acquire technical experience in handling investigations, the Office of the Attorney-General of the Republic and CNDH had established an inter-agency group under the control and responsibility of CNDH. The results obtained had been submitted as reports to the May and October 1993 sessions of the United Nations Commission on Human Rights Working Group on Enforced or Involuntary Disappearances held respectively at New York and Geneva. Ninety-eight of the 210 cases reported by the United Nations working group had corresponded to an exceptional situation that had occurred in Mexico as well as in other countries of America, Europe, Asia and Africa during the 1970s and early 1980s. CNDH had carried out various investigations to try to clarify those cases. The activities of the armed guerrilla groups, operating mainly in the state of Guerrerro, had included abductions, assassinations, robberies and frequent skirmishes with the Mexican army. Urban guerrilla activities had occurred in the main cities of the country. Over the past five years, the Working Group had considered 36 cases of alleged disappearances to have been clarified. Eight hundred and nine documented cases had also been submitted to the Working Group, 13 of which were of particular significance.

(Mr. Gonzalez Felix, Mexico)

62. Turing to section II (d), he noted that CNDH had identified some violations of the provisions of articles 7 and 9 of the Covenant. CNDH had taken down the statements of 131 persons detained at the Cerro Hueco Social Readaptation Centre, Tuxtla Gutiérrez, Chiapas, who had also been filmed on video. Their psychological and physical health had been certified. It had also been certified that the wounds of 72 of them were not life-threatening and would heal in less than 15 days. In six cases, the healing time had been put at over 15 days. CNDH found that such persons had been subjected to ill-treatment, and the members of the armed forces and judicial police responsible must therefore be identified. Complaints of ill-treatment submitted to the Commission had also related to other violations such as illegal detention, holding of prisoners incommunicado, false accusation and, in some cases, torture. CNDH was investigating those complaints.

63. Concerning section II (e), since the establishment of CNDH and as a result of recommendations made by it, 1,180 public servants had been penalized - 750 federal civil servants, 410 local civil servants and 20 municipal civil servants. Criminal proceedings had been instituted against 344 of them, 228 had been subjected to preliminary investigations, 75 had been relieved of duties, 153 had been dismissed, 250 suspended, 119 reprimanded and 11 had been fined.

64. Turning to section II (f), he indicated that the Comité Ciudadano Plural, set up in March 1992, had been abolished in early 1993 because its functions duplicated those of CNDH. Instead, a unit had been established to follow up the recommendations of CNDH, which had specific powers to act against justice officials who violated human rights. That unit, was inter alia, responsible for supervising and following up preliminary investigations carried out at the discretion of the deputy prosecutor, gathering information required to follow up the recommendations of CNDH, and informing the deputy prosecutor on progress and the extent of compliance with those recommendations.

65. Where section II (g) was concerned, all the recommendations had been accepted by the appropriate authorities. The extent of compliance varied with the nature of the recommendations since in many cases they related to the building of infrastructure whose costs and times of implementation were such that he could not provide an immediate answer. With regard to section II (h), in the past two years, 14 specific cases of arbitrary detention had been investigated. The investigations had led to specific recommendations by the CNDH to various authorities.

66. Concerning section II (i), free legal assistance was provided to those persons who did not have the means to pay for a private lawyer. While such assistance might be requested voluntarily by those involved in labour and civil cases, it was compulsory in criminal and family cases. The State's corps of defence lawyers, supervised by the Supreme Court of Justice, had provided legal advice in approximately 37,500 cases in 1993. In Mexico, free legal assistance was not provided only through the public defender's offices. There were also offices established by the State to provide assistance and advice in specific areas such as trade union and labour law and family matters. The universities also provided free legal advice to the poor.

The meeting rose at 6 p.m.

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Fiftieth session

SUMMARY RECORD OF THE 1304th MEETING

Held at Headquarters, New York,
on Tuesday, 29 March 1994, at 10 a.m.

Chairman: Mr. ANDO

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Mexico (continued)

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a corrigendum, to be issued shortly after the end of this session.

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Mexico (continued) (CCPR/C/76/Add.2)

1. At the invitation of the Chairman, Mr. González Felix (Mexico) took a place at the Committee table.

2. The CHAIRMAN invited the Committee to resume its questioning of the Mexican delegation in connection with section II of the list of issues.

3. Mr. PRADO VALLEJO requested the reporting State to clarify whether the amnesty decreed by the President of the Republic in connection with the events in Chiapas applied only to those who had participated in the armed uprising, or also to members of the security forces who might have committed human rights violations.

4. Non-governmental organizations had reported that torture and arbitrary detention by the security forces were continuing, that trials were often delayed and that victims of torture did not receive compensation. The Government should be more specific about the use of torture to obtain confessions, which appeared to be a routine police practice.

5. Paragraph 155 of the report (CCPR/C/76/Add.2), which listed the penalties and security measures provided for in article 24 of the Penal Code, needed clarification. In particular, subparagraph (11) (Suspension or deprivation of rights) called for explanation, in the light of article 4 of the Covenant, which referred to a number of rights that could not be suspended under any circumstances. Similarly, the meaning of subparagraph (13) (Special publication of the sentence) was unclear, as sentences were normally published.

6. Turning to paragraph 175 of the report, which dealt with prison work, he noted that prisoners were required to pay for their keep in the prison by deduction from what they received for the work they performed. He would appreciate information on the guidelines that determined the type of work performed by prisoners and their rates of pay. Details on the solitary confinement cells should also be provided.

7. Noting that the National Human Rights Commission had adopted a resolution stating that only well-documented complaints of torture would be investigated, he said that the implications of that decision were unclear, as it was doubtful whether victims of torture could provide documentation.

8. The Government should respond to the reports received by the Committee that many of the persons arrested in Chiapas had yet to stand trial, as well as information from Amnesty International indicating that some members of indigenous groups who did not speak Spanish had been tried and convicted without the assistance of an interpreter.

(Mr. Prado Vallejo)

9. Lastly, he would appreciate further details on the remedy of amparo and its availability to defendants who claimed that their confessions had been extracted by force.

10. Mr. BRUNI CELLI said that among the positive developments in Mexico in recent years had been the amendment of the Act for the Prevention and Punishment of Torture, which provided penalties of up to two years in prison for persons convicted of torture, and established the right of victims to compensation. However, as pointed out by Mr. Prado Vallejo, the practice of torture had not only persisted, but was actually common in the initial stages of a criminal prosecution. Amnesty International had forwarded to the Committee complaints of prisoners being tortured on the premises of the Ministry of Justice in June 1993, and of forced confessions being obtained by the security forces from members of indigenous groups in San Cristóbal in March 1993.

11. With regard to the death penalty, there appeared to be a strong consensus in favour of its abolition, as reflected in paragraphs 91 and 102 of the report; however, the Mexican representative had stated at an earlier meeting that no conclusion had been reached on the subject during the process of constitutional reform. It would be interesting to learn whether there was significant resistance in certain quarters to abolishing the death penalty.

12. Mrs. EVATT said that at an earlier meeting, the Mexican representative, referring to section II (h) of the list of issues, had mentioned that 14 cases of arbitrary arrest had been investigated and had led to recommendations. However, according to the report of the National Human Rights Commission, 1,000 complaints of arbitrary arrest had been received during the period 1990-1992, resulting in only 51 recommendations; the Government should explain the discrepancy between the two figures. It would also be interesting to learn whether there had been a reduction over time in the number of complaints received by the Commission. Details on the number of disappearances should also be provided.

13. Mr. WENNERGREN said that he would appreciate additional information on the system of administrative remedies and on whether individuals could have access to judicial review if they deemed administrative decisions to be contrary to their interests. It would also be interesting to learn whether such review would be carried out by a district court or by a special administrative tribunal.

14. Mr. EL-SHAFEI requested the Government to clarify the following issues: whether detainees were interrogated in the presence of a lawyer; whether the time and duration of an interrogation and the names of all persons present were recorded, thus permitting subsequent judicial scrutiny; whether the guidelines for interrogation procedures were published and made known to defence lawyers and human rights groups; whether there was any distinction between the authorities responsible for detention and for the interrogation of detainees; whether arrests were carried out under judicial control; whether law-enforcement officials informed persons about to be arrested of the reasons for their arrest; whether all detainees received an oral or a written explanation, in a language which they understood, of their legal rights, including the right to lodge a complaint; the circumstances under which members of the armed forces arrested or

(Mr. El-Shafei)

detained civilians, and whether judicial safeguards existed against unlawful arrest and detention; whether detainees were under judicial supervision; whether medical safeguards were available; whether all reports of torture or ill-treatment were thoroughly and impartially investigated and torturers brought to justice; and, lastly, whether victims of torture were compensated.

15. Mr. AGUILAR associated himself with Mr. Bruni Celli's comments regarding the death penalty.

16. He was concerned at the reports of excessive use of firearms by the police and security forces in Chiapas. While a state of war had undoubtedly existed in that region, the complaints were less suggestive of an effort to restore law and order than of anti-subversive activity in the broader, Central American sense. He would appreciate information on whether such complaints had been investigated and whether any member of the armed forces had been tried for human rights violations.

17. The problem of firearms in the hands of civilians was also a source of concern, as shown by the recent assassination of the presidential candidate, Luis Donaldo Colosio. The right to bear arms was embodied in article 10 of the Constitution; it would be interesting to learn whether any amendment to that article was contemplated.

18. With regard to article 6 of the Covenant, the Committee had been informed that investigations had been carried out into the disappearance and subsequent death of persons arrested by the security forces, but that such incidents were continuing. The reporting State should indicate whether an education programme existed to train members of the armed forces in the observance of human rights. A further problem related to the activities of informers who collaborated with the police and who were accused of being responsible for disappearances, torture and extrajudicial executions; details should be provided on any steps taken to prevent such persons from acting under police authority and to investigate any deaths or disappearances attributable to them.

19. In connection with article 7 of the Covenant, it appeared that, despite the existence of the Act for the Prevention of Torture, there was a general atmosphere of tolerance of torture. It was also alleged that certain groups of people, such as those critical of the Government, human rights activists, trade-union leaders, leaders of indigenous groups and persons accused of drug trafficking, were routinely subjected to torture; further data should be provided.

20. Drawing attention to paragraph 229 of the report, which detailed a number of measures adopted in respect of migration, he requested the Government to comment on the allegations that persons attempting to cross the border between Mexico and the United States illegally were commonly subjected by the Mexican authorities to ill-treatment, including torture, and that no victims had ever been compensated.

21. Paragraphs 179 and 180 of the report, which indicated that, with the exception of Mennonites, no Mexicans had claimed the status of conscientious

(Mr. Aguilar)

objector to compulsory military service - an assertion which hardly seemed credible - should be clarified in the light of article 8 of the Covenant.

22. Lastly, he would appreciate additional information on the Legal Services Programme, especially the lawyers' offices referred to in paragraph 277 of the report. In connection with article 14 of the Covenant, it would also be useful to learn whether public defenders were available and what steps were taken to ensure a proper defence for non-indigent persons who had not retained counsel.

23. Mrs. HIGGINS said that the whereabouts of most of the people arrested during the Chiapas uprising were still unknown. Some were being held at Chiapas state prison, and had received visits from representatives of Amnesty International; the Government should indicate where the others were being held, whether at army bases or elsewhere.

24. She would appreciate information on whether measures were in place to ensure that members of the security forces who were dismissed after having been found guilty of abuses could not be rehired subsequently for similar posts.

25. With regard to a fair trial and pre-trial detention, she had the impression that arrests without warrants were common; she would welcome information on any efforts to control that practice, and on whether there were time-limits for informing people of the charges against them and bringing them before judges.

26. She questioned the effectiveness of the remedy of amparo, as the Committee had been informed that judges sometimes ruled favourably on amparo applications and ordered the unconditional release of detainees, but that the persons concerned were neither released nor brought to trial.

27. Mr. DIMITRIJEVIĆ said that he was surprised by the somewhat unconvincing references in paragraphs 179 and 180 of the report (CCPR/C/76/Add.2) to conscientious objectors. The fact, for example, that Mennonites were not required to serve seemed to contradict the statement that there was no legislation governing the matter, since that clearly constituted an exception. Regarding instances of torture, where victims risked reprisals if they were identified, he asked what happened at trials of those accused of torture and what objections there were to evidence obtained under duress. For torture to end, in addition to investigating individual instances it must be made clear, in a systematic manner, that such practices were unacceptable.

28. Mr. SADI noted that Amnesty International, a highly respected organization, had recently sent a delegation to Mexico and had reported on instances of deaths, disappearances and torture. He asked what had happened to the Amnesty International report and to its recommendations. The National Human Rights Commission appeared to lack authority to act effectively, a point raised by a number of human rights organizations. Accordingly, he wished to know whether there was any intention of extending its authority.

29. Mr. GONZÁLEZ FELIX (Mexico), responding to questions, said that the amnesty in Chiapas was intended to induce the rebels to lay down their weapons as a step towards negotiations. The amnesty did not form part of the human rights investigations, and was without prejudice to the conduct and findings of the investigations.

30. Allegations of torture had quickly come to the attention of the National Human Rights Commission following its establishment in 1990, and a new Federal Act for the Prevention and Punishment of Torture had recently been adopted. The Act had introduced important changes: confession was no longer a sufficient basis for the commencement of criminal proceedings; interrogations, which were now recorded, must take place in the presence of a lawyer or other reliable witness; the burden of proof had been reversed, so that any captor must disprove an allegation of torture; the severity of penalties had been increased and their application broadened; and victims could seek compensation. The Act had had a marked impact: in the first half of 1991, allegations of torture had constituted the largest class of complaints to the Commission, but by 1993 they had fallen to tenth place. Regulations had been promulgated pursuant to the Act and were already being applied. One problem that the Act had resolved was that previously such cases had had to be pursued on some other ground since there had been no specific category relating to allegations of torture. It was also now possible to pursue a claim for civil damages in parallel to a criminal action. Once the Commission had issued a recommendation in such a case, judges were bound to take it into consideration. The Government was continuing the development of a judicial mechanism to ensure the follow-up of criminal actions in cases of torture. The whole subject was currently the foremost concern of the Commission and was being worked on intensively. A number of changes had already been made in the legislation and procedures relating to the subject, and further improvements would be made.

31. With respect to the responsibility of prosecutors where there were allegations of torture during investigations, the law provided that, as the officials in charge of investigations, they bore responsibility for the investigations and would thus be held responsible should there be instances of torture. Prosecutors had been suspended in such instances.

32. The incidence of arbitrary arrest was less than might appear, in that such complaints were often made in many instances where individuals were caught in flagrante delicto, where there was no opportunity to issue a warrant. Recent examples included the assassinations of political figures. The number of cases in which allegations of arbitrary arrest had been upheld by the National Human Rights Commission was relatively small, amounting, for example, to just 29 for 1993 and the first part of 1994. Where allegations were upheld, those who had broken the law were punished, and the judicial authorities were kept fully apprised of the fact that arbitrary arrest had occurred.

33. Certain offences could result in a loss of political rights, for example, the right to hold public office. The suspension of such rights, essentially involving positions of trust, in those circumstances, did not contravene the provisions of the Covenant. Sentences in cases of defamation were made public and published in the press.

(Mr. González Felix, Mexico)

34. The payment of prisoners related to situations where prisoners had elected to do work to cover expenses in excess of their basic maintenance expenses, which were borne by the State. The scheme was voluntary, and did not constitute forced labour.

35. Solitary confinement took place in cells with special safety and security measures, such as padded walls and television cameras, to allow for close monitoring of prisoners who were liable to be dangerous to themselves or to others. Such cells were used, for example, for the detention of drug traffickers, who were generally extremely dangerous prisoners.

36. Interpretation services were available for members of indigenous groups during criminal proceedings, and the National Human Rights Commission had taken steps to have its regulations made available in a number of indigenous languages.

37. The recourse of amparo was intended for emergency situations to enforce constitutional rights, and, while it could operate like habeas corpus and result in release, it was not generally an effective remedy in the case of completed acts. Amparo could be applied both directly and indirectly. A direct application might involve, for example, judicial review of a judgement of a court of first instance or an arbitral decision where there had been an irregularity in the proceedings. An indirect application might arise where an individual's rights were threatened, and application was made to a district judge against the violating authority. Under the Mexican judicial system, amparo offered the best means of protecting a civil right. Since it could not be used to remedy completed acts, there was a need for a non-adjudicatory body such as the National Human Rights Commission.

38. Regarding alleged human rights violations in Chiapas, the Commission had found that violations had indeed occurred, and that the security forces had broken into homes, removed various tools, and physically ill-treated a number of individuals. Appropriate proceedings were being conducted against the officials responsible, including the coordinator of the security forces. The Commission had found that the goods seized should be returned, and compensation awarded. The Commission's findings were being sent to the Governor of Chiapas.

39. Turning to arrests in Chiapas, he said that only 32 people remained in detention, at the state prison, and that any human rights organization that had expressed an interest had been able to visit them, including Amnesty International and the International Committee of the Red Cross, which had verified the conditions in which they were held. No one was being detained in a military camp.

40. The question of whether the death penalty should be abolished was being widely debated in Mexico and remained a concern of the Government. However, the assassinations of Cardinal Ocampo and Mr. Colosio, for which the death penalty was being widely demanded, made it difficult for the Government to go forward on the matter for the time being.

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41. Turning to Mrs. Evatt' questions, he said that the figure of 14 cases of arbitrary arrest he had given earlier had been erroneous; there had been 1,000 complaints of such arrest, but the number of actual cases was under 100. Most of the cases of disappearances under investigation were of long standing. Since its previous report, the Government had made a determined effort to clarify the subject, and the number of persons listed by the United Nations as having disappeared had dropped from 258 in 1990 to 210 at present. With the exception of the one significant case of José Ramon Garcia Gomez in 1989, and the 23 cases in Chiapas, which were under investigation, there had been no new cases.

42. Replying to Mr. Wennergren on the question of remedies, he said that the one most frequently invoked was that of amparo, which was commonly used in the federal courts. It was also possible to file a civil complaint and request compensation, but doing so had the effect of transforming cases into civil disputes and making it difficult to determine how they had been resolved. The advantage of a recommendation by the National Human Rights Commission was that it was transmitted directly to magistrates, who could then take it into account in considering the general situation of the individual concerned.

43. Replying to Mr. El-Shafei's questions, he said that a detailed record was kept of interrogations, and guidelines had been issued establishing the procedures for interrogation and the rights of persons being interrogated. There was a separation of powers with respect to investigatory functions, as persons detained by the judicial authorities were investigated by the Public Prosecutor's Office. Medical care was available to persons under detention and a medical certificate had to be prepared certifying that a person under detention had not been subjected to ill-treatment.

44. Turning to Mr. Aguilar's questions, he agreed that the use of firearms was a serious problem. Those weapons were not manufactured in Mexico, and he hoped, therefore, that they would be monitored more strictly at the international level. Although firearms could be owned and kept at home by civilians, a licence was needed for them; the main problem was that of illegally owned firearms. Replying to the question on training, he noted that there were educational programmes for the police and security forces and the judicial authorities, and a training institute for prison workers which offered human rights courses.

45. With respect to the problem of informers, he said that instructions limiting and regulating their use had been issued to the police.

46. The National Human Rights Commission had produced a paper on the subject of the improvement of conditions for migrant workers, and the Government was making efforts to improve their treatment. Military service in Mexico was voluntary, although one hour a week of military training was given to all young people for one year. The question of conscientious objector status had arisen in Mexico only in connection with the Mennonite community, and had been satisfactorily resolved. In Mexico, persons accused in criminal cases were required by law to have legal representation, and a system existed for providing members of indigenous groups, the indigent and the disadvantaged with legal assistance. Efforts were being made to further improve that system.

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47. Replying to the questions put by Mrs. Higgins, he said that there were 32 detainees in Chiapas and that they had been in contact with Amnesty International and the International Committee of the Red Cross. Special investigations were in progress with respect to the allegations of torture and execution under detention in that state, and it was hoped that a final report on the matter would be issued shortly. The matter of unreasonable imprisonment and delays in prosecution was one on which intensive work was being done, and the Commission was most active in that area. Although amparo was an effective remedy in criminal cases, in the cases to which Mrs. Higgins had referred it did not always apply.

48. Replying to Mr. Sadi, he said that Amnesty International's views were frequently solicited and its suggestions had frequently been adopted.

49. The CHAIRMAN said that section III of the list of issues dealt with liberty of movement, expulsion of aliens, and freedom of religion, assembly and association. In paragraph (a), the reporting State was asked to comment on the effect of the recent events in the Chiapas and other regions on the exercise of the rights guaranteed in article 12 of the Covenant. Paragraph (b) sought information on the investigations by the National Human Rights Commission into the murder of media representatives. Paragraph (c) requested clarifications as to the consistency of the restrictions on the employment of foreigners referred to in paragraphs 425 and 426 of the report (CCPR/C/76/Add.2) with the provisions of the Covenant. Paragraph (d) inquired about the measures taken to ensure liberty of movement and freedom to choose one's residence.

50. Mr. GONZÁLEZ FELIX (Mexico), with regard to paragraph (a), said that the Government had not declared a state of emergency in Chiapas or suspended the guarantees of any human rights there. One area had been blocked off by the military briefly, as required by military exigencies and in order to protect civilians, the press and non-governmental organizations from the armed clashes. As to paragraph (b), he said that a new stage of the special programme to protect journalists had been initiated in 1992. The Commission had investigated a number of incidents involving journalists in 1993, with varying results. However, as a result of the initiation of the special programme, the number of attacks on journalists had decreased. He noted that senior police officials were under detention at a maximum-security prison in connection with the murder of the journalist Manuel Buendia.

51. Turning to paragraph (c), he said that article 5 of the Constitution guaranteed to all persons without distinction the freedom to work in any field of their choice. Certain posts, however, could be filled only by Mexicans for reasons of national security, such as those of military officers. Some preference was given to Mexicans in employment, but discrimination did not result because the preferential treatment was not obligatory. Mexico had relaxed its labour and immigration policy to facilitate the entry of foreigners wishing to work in the country. Reforms to the General Population Act and the law governing the exercise of professions in the Federal District had eliminated restrictions, establishing five separate categories of non-resident workers covering all types of employment, including the professions. The North American Free Trade Agreement between Mexico, the United States and Canada had included provisions on non-discrimination in employment.

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52. As to paragraph (d), he said that freedom of movement and choice of residence were guaranteed in article 11 of the Constitution. The exercise of that right could be restricted only by the judicial authorities in accordance with the law.

53. The provisions of the General Population Act were based on considerations of public order and national security, and were general in nature; therefore, they met the requirements for the establishment of restrictions on freedom of movement in article 12 of the Covenant. The Act guaranteed to Mexican nationals the right to enter the country even without nationality documents; their sworn statement that they were Mexican nationals would suffice. One of the objectives of Mexico's immigration policy was to promote the repatriation of Mexican citizens and their reintegration into society. Both foreigners and Mexican nationals could leave the country freely, unless criminal charges were pending against then.

54. Mr. HERNDL drew attention to the National Development Plan (1988-1994) mentioned in paragraph 324 of the report (CCPR/C/76/Add.2), and requested further information on its legal nature - whether it was a law, an ordinance, a legal instrument or simply an instruction. Referring to paragraph 325, he asked what measures had been taken by the Department of Security and Highways to guarantee the rights of demonstrators, and if those measures applied only to the demonstrators or also to the police who monitored them. More details would be welcome on the duties of the police in respect of peaceful demonstrations (para. 331), and the procedures for ensuring public order during mass demonstrations (para. 332). He had heard disturbing reports of a peaceful demonstration of Volkswagen workers where the police had attacked the demonstrators with dogs and clubs, and would like further information on that incident.

55. Government employees had the right to strike, with the exception of those in "positions of trust", which should be more clearly defined. It was also unclear whether that practice conformed to ILO conventions on freedom of association. It would be interesting to know the extent to which the police had the right to form a union and demonstrate in favour of their own interests. He requested an explanation of the fact that only 9.3 per cent of the economically active population was represented by trade unions, as noted in paragraph 362 of the report.

56. Mr. NDIAYE said that he sensed a certain conflict between the church and the State from his reading of paragraph 342, which discussed constitutional provisions that appeared to circumscribe church property, and from his reading of paragraph 421, which stated that ministers of religion could not hold public office. It would be interesting to learn more about the relationship between church and State in Mexico.

57. More information was needed on the Calvo Clause mentioned in paragraph 355. In addition, paragraph 364 stated that Mexican legislation did not recognize any differences between the status and rights of children born in or out of wedlock, but he wondered how that principle was applied in practice.

58. On the subject of political parties, it seemed unnecessarily restrictive to prevent naturalized Mexican citizens from assuming the office of President or parliamentary deputy. The majority party had held power for some 70 years, and he wondered about the likelihood of a true change of government. No doubt, its financial resources were greater than those of the opposition parties, and additional information should be provided on the limits on campaign spending and whether external assistance, from international foundations, for example, could be accepted. He failed to understand why Mexico had refused to allow international observers at its elections, and would welcome further clarification.

59. Mr. AGUILAR, referring to the amendments to the General Population Act mentioned in paragraph 229, asked for more information on the changes in the penalties imposed on traffickers in migrant workers, many of whom came from the countries of Central America. The meaning of the first sentence of paragraph 287 should be clarified, since it had led him to wonder whether a childless married couple was considered a family under Mexican law even though there had been no biological generation from the union. With regard to the right of workers in the banking sector to strike, he requested more information on the restrictions to that right, which appeared contrary to article 26 of the Covenant. He also had been struck by the low percentage of workers who were members of unions, as mentioned in paragraph 362, and would like more details concerning their political affiliation, for example, how many were members of the Partido Revolucionario Institucional, affiliated with other political parties, or independent.

60. Lastly, he shared the misgivings expressed by Mr. Ndiaye concerning the refusal to allow international observers at Mexican elections.

61. Mrs. EVATT said that she would welcome more information on the nature of the irregular conduct by public servants mentioned in paragraph 286, the compensation provided, and whether any irregularities had arisen in relation to the recent police action in the state of Chiapas. From the numerous reports of restrictive rules regarding assembly, public meetings and peaceful demonstrations received from international organizations before the events of January 1994, it appeared that a different type of law operated in that region. She requested an account of how the laws and their implementation differed with regard to Chiapas. Could the National Human Rights Commission assess the laws of that state to verify their compatibility with the Covenant and make recommendations?

62. Mr. POCAR said that he had heard disturbing reports regarding the freedom to demonstrate peacefully and to organize trade unions, including a report concerning the February 1993 arrest of the leader of a trade union in connection with a strike against companies near the United States border with Mexico. Further information on that incident as well on measures taken to guarantee the freedom of trade unions and members would be helpful.

The meeting rose at 1 p.m.